complaint

Mr C has complained about short-term loans granted to him by MEM Consumer Finance Limited trading as Payday UK ("Payday UK" or "the lender").

background

Payday UK agreed four loans for Mr C in the period November 2015 to June 2016. The loan amounts ranged between £100 and £810 and all but his first loan were to be repaid over a number of months. The following table summarises some of the information Payday UK provided about these loans:

Date applied	Date repaid	Principal	Interest paid	Repayments
08/11/2015	27/11/2015	£100	£9	£109
27/11/2015	31/03/2016	£300	£58	£154
06/06/2016	29/06/2016	£200	£34	£77
29/06/2016	04/10/2016	£810	£282	£125

Mr C says that he was struggling financially when Payday UK agreed to lend to him and that it lent irresponsibly.

One of our adjudicators reviewed this complaint and recommended that Payday UK refund the interest and charges Mr C paid for his last two loans. Payday UK did not agree with the adjudicator's recommendation. And so the complaint has come to an ombudsman to make a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

I have first considered whether Payday UK did everything it should have when assessing Mr C's loan applications. And, following on from this, I have thought about whether or not any assessment failings resulted in it agreeing to lend to him when it should have known that it would be difficult for him to repay.

Having done so, I am upholding Mr C's complaint for broadly the same reasons our adjudicator did and I am directing Payday UK to refund the interest and charges for his last two loans. I appreciate that this will be a disappointing outcome for Payday UK but I hope my explanation makes it clear why I have come to this conclusion.

did Payday UK carry out proportionate checks?

Payday UK says that it checked Mr C's credit file when he first applied for a loan. The lender says that it asked for his income and expenditure each time and that it was not accountable for any misrepresentation of information from customers.

Payday UK also says that there was gap of several months between Mr C repaying his second loan and applying for his third loan in June and that his third loan was for a lower amount than his second. The lender says that this gap and reduced loan amount indicated that Mr C wasn't experiencing financial difficulty nor was he dependent on short term loans. It also said that three of these loans were instalments loans i.e. to be repaid over several months and that Mr C repaid some of his loans early.

The Financial Conduct Authority was the regulator at the time Mr C borrowed from Payday UK. The regulations require lenders to take "*reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*" - CONC 5.3.1(2). CONC 5.3.1(7) defines 'sustainable' as being able to make repayments without undue difficulty. And explains that this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

So, the fact that Mr C managed to *successfully* repay his instalment loans doesn't automatically mean that these loans were affordable for him and that he managed to repay them in *a sustainable manner.* In other words I can't assume that because Mr C managed to repay his loans that he was able to do so out of his normal means without having to borrow further. I appreciate that there was a gap between him repaying his second loan and taking out his third – but this gap was less than a few months, which I wouldn't usually consider to be a long enough period for him to recover from any financial difficulty he might have been having earlier on. Finally I would say that Payday UK could rely on the information Mr C provided, unless it had cause to doubt the veracity of it.

Mr C's first loan was for £100. Payday UK says that Mr C gave his income as £1,750 and his monthly spend as £1,081. And it says the credit check it carried out didn't reveal any adverse information. I think the checks Payday UK carried out were proportionate here, given the repayment amount and bearing in mind that it was Mr C's first loan. Mr C then borrowed £400 the day he repaid this loan, to be repaid over four months. His income had increased slightly and his spend decreased. Again – I think the checks Payday UK carried out were proportionate here, given the size of the loan repayments.

Payday UK provided customer contact notes which show that Mr C struggled to repay this loan. It seems he contacted the lender in December 2015 to say that he was in financial difficulty and that he had set up repayment plans with other short-term lenders. Payday UK agreed a repayment plan with Mr C and set a flag on his account which indicates that it wasn't happy to lend to him. Mr C didn't manage to meet his repayments again in February due to being overcommitted and finally repaid his loan at the end of March 2016.

Mr C applied for his third loan with Payday UK in early June giving his income as £1,950 and expenditure as £1,140. At this point I think Payday UK should have done more than to ask Mr C about his income and expenditure irrespective of the loan size or term, given his difficulties in meeting his previous loan repayments and the comments he'd made about his other credit commitments. I think it needed to verify the information he'd given and find out about his existing credit commitments. And I think it should have done the same for Mr C's fourth loan, which he took out the day he repaid his third. And so I don't think the checks Payday UK carried out for Mr C's last two loans were proportionate to the circumstances of the lending.

what would proportionate checks likely have shown?

Mr C has provided bank statements that cover the period of lending in question. I can see from these that what he told Payday UK about his income was broadly correct. I can also see from the statements that his outgoings varied according to the number of short-term loans he needed to repay and how much he spent on what appears to be gambling.

In the months preceding Mr C's last two loans i.e. in the period March to May 2016 his spend on existing short-term lending, loans from relatives, some standard bills such as phone and car tax, and regular spend on gambling left him with little or no available money to repay further credit. And this is before considering any money for food or travel and other normal living costs such as rent. Had Payday UK carried out what I consider would have been proportionate checks for these loans, I think it would likely have learnt the extent of Mr C's dependence on payday lending and his regular spend on gambling and, as a responsible lender, would not have agreed these loans for him.

what Payday UK should do to put things right

As I've explained above, I think Payday UK shouldn't have given Mr C his last two loans. And to put this right I think it needs to refund the interest and charges he paid for these. Specifically, it should:

- refund all interest and charges Mr C paid for the loans it agreed for him in 2016.
- pay interest on these refunds at 8% simple* per year from the dates of payment to the dates of settlement.
- remove any adverse information about these loans from Mr C's credit file.

*HM Revenue & Customs requires Payday UK to take off tax from this interest. Payday UK must give Mr C a certificate showing how much tax it's taken off if he asks for one.

my final decision

For the above reasons, I uphold Mr C's complaint in part and direct MEM Consumer Finance Limited (trading as Payday UK) to refund him as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 May 2017.

Michelle Boundy
ombudsman